IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 16533 of 2003

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHARMISTHABEN W/O CHHAGANLAL LALBHAIO PATEL

Versus

MAMLATDAR AND EXECUTIVE MAGISTRATE

Appearance:

MR.RAJESH B SONI for Petitioner No. 1

MS NANDINI JOSHI, AGP, for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 08/10/2004

ORAL JUDGEMENT

1.0 The petitioner herein has prayed for a direction to the respondent authorities to change the name of the petitioner in the birth register maintained by the respondent no.2 and to issue birth certificate accordingly.

2.0 According to the petitioner her correct name is "Sharmishthaben" and in the School Leaving Certificate her name was shown as "Samuben Somabhai Ishvarbhai Patel". Except the school leaving certificate, in all other certificates her name is mentioned as "Sharmishthaben".The petitioner had also followed necessary procedure of Gujarat Government to change her name from Samuben to Sharmishtaben and the same had been published in the Gujarat Government Gazette, Part II dated 18.9.2003 at page 652 (serial no.17). Thereafter the petitioner approached the respondent authority for correction of her name in the birth certificate and to issue fresh certificate accordingly. This request was not acceded to by the respondents and therefore the present petition is filed.

3.0 Heard the learned counsel for the respective parties. Learned counsel for the petitioner relied upon a decision of this Court in the case of Dr. Sukumar Vs. District Registrar, Births & Deaths, reported in 1993(1) GLR 93, wherein while considering sections 14, 15 and 16 of the said Act it is held that there is a power to correct an entry incorrectly made.

3.1 Learned counsel next relied upon a decision of this Court in the case of B.K. Suthar Vs. State and Another, reported in 1983(2) GLR 932 wherein it is held as under:

> "On a plain reading of rule 171 of the Bombay Civil Services Rules, it is manifestly clear that the government servant has a right to the correction of entry either on the ground of apparent clerical error or any other ground including the ground of want of care on the part of the person responsible for making the entry. The rule nowhere provides for any limitation or making such an application for correction of entry. It is, therefore, beyond the powers and the authority of the government to introduce a rule of limitation by an executive direction contained in the Government resolution since the Bombay Civil Services Rules are Rules enacted in exercise of powers conferred by proviso to Art.309 of the Constitution of India."

3.2 Learned counsel for the petitioner next relied upon a decision in the case of Mulla Faizal Vs. State, reported in 2002(2) GLR 1553 wherein it is held that the authorities, under the provisions of section 15 read with Rule 12 of the Rules framed thereunder, are duty-bound in

law to make necessary enquiries and if necessary to obtain medical opinion to grant change of entry in the Birth register regarding the sex of the appellant and to issue to him a corrected birth certificate.

3.3 Learned counsel for the petitioner also relied upon a decision in the case of Vimal M. Patel Vs. State of Gujarat, reported in 2001(3) GLR 2484, wherein it is held that the Registrar is entitled to hold an inquiry for this purpose and on the basis of material on record he is not powerless to make correct entries.

3.4 Learned counsel for the petitioner also relied upon a decision in the case of Dipika Arvindkumar Pancholi Vs. State of Gujarat and Another, reported in 2003(1) GLR 515, wherein it is held that since the statute is silent, it is the case of casus omissi, i.e. circumstances concerning which the Act is silent, and therefore the powers envisaged under Rule 11 can be extended to enter the name even after a period 15 years.

3.5 Learned counsel for the petitioner also relied upon a decision of the Division Bench of this Court in Letters Patent Appeal No.231 of 2001, wherein it is held that no direction can be issued by any authority to take away the powers of the Registrar of making correction in entries which are erroneous in form or substance in the Register.

4.0 Learned counsel for the respondent is not able to contest the aforesaid settled law.

5.0 In the aforesaid premises, the petition is partly allowed. The respondent authority is directed to entertain the application submitted by the petitioner for correcting her name in the light of the change of her name as published in Gujarat Government Gazette Part II dated 18.09.2003 at page No.652 (serial no.17) in the Register maintained under the provisions of Registration of Births & Deaths Act, 1969 within a period of four weeks from the date of receipt of writ of this Court. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI,J.]

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